

Pre-Budget Consultations for Budget 2009

Canada's Writers Promote Canada in a Competitive World

Prepared By
The Writers' Union of Canada
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EXECUTIVE SUMMARY

To support the creative work that is the heart of Canada's cultural economy, The Writers' Union of Canada urges the Government of Canada in its next budget to:

- Invest in Canada by reinstating and increasing the Federal fiscal investment in the cultural programs of the Department of Foreign Affairs and national training institutions.
- Introduce a Copyright-Income Deduction for creators, modeled on that used in the province of Quebec.
- Support The Writers' Union of Canada in its efforts to seek Secured and Preferred Creditor Status for Writers, in the event of publishers going into receivership.
- Introduce a Limited Back-Averaging Plan for the professional income of creators whose incomes fluctuate.
- Exempt from taxation subsistence grants for creators administered by the Canada Council for the Arts.
- Increase the Public Lending Right Commission's budget to bring its hit rate up to a level more aligned with the hit rate established 18 years ago.
- Extend Employment Insurance Benefits to self-employed creators, and creators who work in paid employment to supplement their self-employment, to make them eligible for EI when paid employment is lost.

INTRODUCTION:

The Writers' Union of Canada appreciates the opportunity to participate in Pre-Budget Consultations. This Union, founded by writers for writers in 1973, has evolved into the national voice for over 1,700 writers of books in all general trade genres with a mandate to promote and defend the interests of its creator membership and all Canadians' freedom to write and publish. The Writers' Union of Canada has an important role to play in shaping the application of your objectives.

In the thirty-ninth Speech from the Throne (second session), the Governor General, Michaëlle Jean, emphasized the value of promoting Canada's trade interests abroad, by saying, "Our Government will keep advancing Canada's trade interests in the Americas and around the world to open up new markets for Canada's innovators." The cultural sector has an important role in advancing Canada's trade interests. Cultural industries enrich Canadian society and showcase Canada's cultural exports. Cultural industries' GDP contribution and employment numbers reinforce the fact that cultural industries are a significant contributor to Canada's economic growth.

Cultural industries contributed \$40 billion to Canada's GDP in 2002 alone. During that same year, Mining and Oil and Gas Extraction contributed only \$35.4 billion. The Agriculture and Forestry industry contributed \$21 billion to Canada's GDP, approximately half that of the cultural sector.¹ This translates into 3.8% of value added contribution to Canada's GDP, in 2002, through cultural industries.

The growing importance of the cultural sector is also evidenced by its contribution to Canadian employment. Cultural industries in Canada were responsible for directly employing 597,000 Canadians in 2002 or 3.8% of Canada's workforce. Whereas the Agriculture and Forestry industry combined with the Mining, Oil and Gas industry, employed 602,200 Canadians.²

Between the years of 1996 and 2001, employment in the cultural sector grew at an annual rate of 3.4%, faster than the overall Canadian employment growth rate.

These numbers are only indicative of the direct employment generated by cultural industries and do not reflect the indirect jobs that are created because of the positive multiplier effect of the cultural sector.³

In 2001, twenty six percent (26%) of Canada's cultural sector was self-employed compared with 16% across all industries. Self-employed creators are the foundation of Canada's vibrant Cultural Industry, both home and abroad.

¹ Statistics Canada, Gross Domestic Product by industry, Catalogue no. 15-001-XIE, 2005

² Statistics Canada, Employment by industry, Catalogue no. 71F0004XCB, 2006

³ Statistics Canada, Economic Contribution of Culture in Canada Catalogue no. 81-595-MIE-No.023, 2004

Every year, the list of Canadian writers who have earned prestigious international awards gets longer. This year Canadian Author, Lawrence Hill was awarded the 2008 Commonwealth Writers' Prize (CWP), for his novel, *The Book of Negroes*. The Commonwealth Writers' Prize aims to reward the best Commonwealth fiction written in English and takes it to a global audience, thereby increasing appreciation of and building understanding between cultures. The international recognition Canadian writers and their stories are enjoying has resulted in a tremendous increase in the industry's export sales. But this export success story goes unheralded.

Despite being the creators of the materials that are the basis of the publishing industry's success, the writer entrepreneurs do not have the benefits available to employees of that industry. A financial profile of the average Canadian writer, composer and artist can be summed up quickly: a low-income creator who is self-employed and who, at times, endures a wildly fluctuating income.

Other concerns included fluctuating income. Writers like other self-employed entrepreneurs work long hours to succeed at their craft. Often they must take extra jobs to make ends meet. All of these problems are further compounded by the lengthy process involved in publishing books, a process not measured in weeks or months, but in years. Even if the fruits at the end are bountiful, these follow a long duration of creative output and industry production in which income is low or even nonexistent.

Canada has long maintained that financial security should be in place to permit all Canadians the opportunity to thrive, even in the face of short-term setbacks. Because creators are so often self-employed, they fall through the cracks between the structures government policy has put in place to ensure a quality lifestyle. As primarily self-employed workers, creators cannot claim Employment Insurance benefits, for example. Even if they supplement their artistic endeavors with paid work, because they are primarily self-employed, they are again denied the temporary relief of insurance when paid work -- for seasonal or other reasons -- is abruptly ended.

Supporting Canada's self-employed creators will bring Canada closer to the Government's expressed goal of having Canada become a meaningful place in the world of the future. Providing Canadian writers with equal opportunities to succeed will enhance Canada's cultural wellspring, its diversity, its cultural thoughtfulness, the proliferation of work by its artists who make a profound contribution to the progress of our civilization, not to mention the GDP.

Some of the proposals that follow are not new but we maintain they address the inequalities writers and other artists face. We respectfully submit that they will help this Government achieve its stated objectives.

Invest in Canada:

In August of this year the federal government cancelled the \$4.7-million PromArt Program and the Trade Routes program that sends artists abroad to promote Canadian culture. Foreign Affairs Canada's (FAC) Arts Promotion Programs are Canada's primary foreign policy tool to promote Canadian culture abroad. These funds provide travel grants to Canadian artists/companies and enable Canadian missions (embassies, high commissions, consulates) abroad to deliver their cultural programs. Travel grants are among the best-value support tools available and they make money for Canadians. In March 2005, the Arts Promotion Program budget experienced a 35% cut (\$2 million/year) in funding due to the sun-setting of FAC's Public Diplomacy fund. This cut represented a significant reduction in program funds to support Canadian artists at a time when the caliber and international demand for Canadian talent was growing. If the Department is to sustain opportunities for showcasing Canadian creativity internationally, the program must not only be continued but funding (an additional \$10 million/year) must be infused into the program.

These cuts will result in Canada losing its place on the world stage. International events involving Canada's premier art organizations, such as the National Ballet of Canada, l'Orchestre symphonique de Montreal, the National Arts Centre Orchestra, La La La Human Steps, and the Venice Biennale, will not receive the required FAC funding to present abroad. Canada's presence at key international events in visual arts, architecture and media arts such as the Venice Biennale, the Sao Paulo Biennale, the Sydney Biennale or the Shanghai Biennale will end. Familiarization visits for foreign buyers and international exhibitions tours by Canadian art galleries, artist run centres and museums would be cut. Support to Canadian festivals, such as the East Coast Music Awards, to invite foreign buyers will be reduced or eliminated. The voices of Canada's writers will be silenced throughout the world and foreign revenue to Canada generated through cultural industries will cease to flow into Canada.

COPYRIGHT-INCOME DEDUCTION:

Twice in the last few years, Parliament has considered a Private Members Bill calling for copyright-income deduction for writers and other artists. Although the first Bill was general in tone and lacked specifics, it nonetheless captured the spirit of the inequity writers face and the general principles of what might help correct it. We again recommend that the Department of Finance institute a Copyright-Income Deduction for creators.

This deduction has been used in Quebec for several years, where it not only corrects the tax penalty implicit in the Income Tax Act but also works to encourage, rather than penalize those who try to make a living from their creations. In Quebec, the provision applies to writers, artists, filmmakers, and composers: any artist who produces copyrighted material that generates income. This provision would be easy to administer and its effect would be to encourage self-employed creators to concentrate on creating new works instead of taking on non-creative jobs to provide the income necessary to have more time to create.

The Copyright-Income Deduction effectively removes fluctuations from creators' incomes since, although most creators cobble together a living from a variety of sources, it is the royalties earned on copyright material that create the wild income fluctuations.

The Copyright-Income Deduction requires almost no calculation and fits easily within the existing framework of the Income Tax form. There are many precedents already on the form, such as the "Deduction for employment income earned outside Canada," or the "Deduction for employees of certain international organizations like the United Nations." Canada has a long history of giving special consideration to enterprises that further the national interest: for instance, scientific research and experimental development. Likewise, the contribution made by Members of Parliament is appropriately recognized through a tax-exempt allowance. The Copyright-Income Deduction would function in the same way, providing an incentive to those who create.

The cost to the Government would be miniscule and the return to the economy would be dramatic. Setting a reasonable upper limit of income -- and only that income derived from the artistic endeavor-- would ensure that only those writers and artists with low incomes would be able to derive benefit from the deduction. We respectfully suggest that, as creators, we are unlike any other taxpayers. Our creativity provides the raw materials for the entire cultural sector that receives a variety of subsidies and incentives at the production and dissemination levels. We are seeking equitable treatment. As well, no less than 6,000 authors, earning less than \$12,000 per annum, support a book publishing industry of taxpayers who earn an average of \$40,000 per annum.

Encouraging the creators who produce the intellectual property that constitutes the building blocks of our various cultural industries is an important way to stimulate the economy of the entire cultural industry. Without them, the number of other taxpayers in the industry (who have significantly larger incomes than creators) will diminish, with a negative impact on Government revenues.

PREFERRED CREDITORS AND REVERSION OF RIGHTS:

Preferred Creditor: The past few years have seen a dramatic disruption in the book industry, notably the collapse of General Distribution Services and its fallout effect, on the publishers distributed by it and their authors and on the authors published by Stoddart Publishing (like GDS, owned by General Publishing). In recent years there have been less noticed changes caused by the insolvency of other publishers, including Somerville House, Press Gang, Stewart House and Ragweed, with lost royalties for most and much delayed royalties for a lucky few. Most recently, in July 2006, Hushion House Publishing filed for bankruptcy.

Without the creations of writers there would be no publishing industry. When a publishing company in financial difficulty goes into receivership writers have no special rights. Legislation that will recognize the critical role played by writers by giving them both preferred and secured creditor status is long overdue - a preference similar to that accorded to employees and security in the form of an author's lien on the publisher's inventory of books written by him or her.

We submit that authors should be treated as preferred creditors and should be entitled to receive their unpaid royalties *pari passu* with the unpaid wages of employees. We submit that a provision to this effect in the BIA should be backed up by a provision in the Canada Business Corporations Act (and its provincial counterparts) to make the directors of corporations jointly and severally liable for the royalties of authors. This will make publishers more cautious about using royalties owed to authors for new projects when their future revenues are in doubt.

We further submit that authors, although they do not own the physical copies of their works, should be treated in a manner akin to the treatment of unpaid suppliers to repossess their goods proportional to unpaid amounts. Furthermore, they should have a lien akin to the special right for farmers, fishermen and aquaculturalists. The claim of an unpaid supplier to repossess goods ranks above all other claims (other than a subsequent purchaser for value without notice).⁴ A publisher's "goods" are more than the physical inventory of a work, as they include the author's intellectual property. If that intellectual property has not been fully paid for, the author should have a lien on

⁴ BIA, section 81.1

the physical books to the extent of the accrued royalties or other shortfall in payment. What we are asking for is comparable to the special right of farmers, fishermen and aquaculturists to a charge against the bankrupt's inventory securing unpaid amounts for their products.⁵

Reversion of Rights. We submit that rights granted to a publisher with respect to both unpublished manuscripts and published books should revert to the author immediately upon bankruptcy, that is, without paying and without waiting. The trustee in bankruptcy should not be permitted to carry out the contract without the author's consent, as publishing is a creative business and cannot be administered by economists and accountants without risk to the artistic and literary integrity of the books produced. Legal writer and practitioner John McKeown writes: "In the event that an agreement between an author and publisher is dependent on the reputation of the publisher, or required the publisher to fulfill duties of a personal nature and contained no provision for its assignment, the agreement may be considered to be of a personal nature and terminated by the bankruptcy of the publisher. In such cases, the trustee will have no right to publish the work, which was the subject matter of the agreement".⁶ The author should be entitled to revert the rights in every instance of bankruptcy of his or her chosen publisher and to make his or her own alternative arrangements for publication. Reversion of rights should also be possible in instances of receivership short of bankruptcy.

LIMITED BACKWARD-INCOME AVERAGING:

As we have described, most writers cobble together their incomes from various sources: teaching, editing, or driving a cab. Still, book royalties and advances account for a third of a writer's income, on average. And it is this income that is subject to the fluctuations that create the unfair taxation.

A book, like any large creative endeavor, can take years to write. Yet the bulk of the income generated from that book usually arrives in one fell swoop or, at best, over one or two tax years. For most authors, there is very little in the way of deductions to write off against such income. Creative work is a product of the intellect and the imagination. A creator puts in years of labour and often years of sacrifice, incurring debt, doing without. Then, when the payoff comes, that income is taxed as if it were earned entirely within that taxation year.

⁵ BIA, section 81.2

⁶ John S. McKeown, *FOX Canadian Law of Copyright*, 3rd edition (Carswell, Toronto, 2000), page 388.

In 1997, Price Waterhouse noted that, "the Department of Finance . . . has cautioned that general tax reductions are not affordable." Even then, however, it pointed out that the government "has indicated that selected, targeted cuts may be feasible." Now that the Government's policies are showing financial benefits, the time is right to rectify this injustice by instituting measures that will ease the tax burden on Canada's creators.

In the past, the Standing Committee of Finance has recognized the injustice of this inequity and has recommended that the Government institute income backward averaging for creators.

We urge this Government to include creators in these considerations. A targeted income backward-averaging program for self-employed creators would be easy to apply and to enforce. Revenue Canada has issued Bulletins defining writers and artists already, thus ensuring that the backward-averaging measure would be easily targeted and specific. And, as we know from the recent writers' survey, the majority of writers earn low incomes, which makes them all the more vulnerable to tax penalties in years when their incomes fluctuate.

SUBSISTENCE GRANTS:

One of the most confusing inequities has been policy towards subsistence grants for writers and artists. These are grants that provide minimal stipends for artists to live for several months while they create their cultural product. Hence their name, "subsistence." We contend these grants should be tax-exempt.

People otherwise employed on a full-time basis are ineligible to apply for these grants. Only self-employed creators may apply. If grants arrive at the beginning of the year, the grant usually has been exhausted at tax time by rent, food and the necessities of life required during the period of the grant. Creators may have to borrow money in order to pay the tax on these grants. In essence, taxing grants such as these undermines the principle of survival that inspired their creation.

Given that the maximum value of these grants is only \$20,000, for several months' work, the overall tax revenue they produce is minimal, but taxation's impact on the struggling artist can be severe. Also, they often arrive at the end of the calendar year. When a writer receives a subsistence grant in the winter, before the beginning of the period it is designed to offset, too often a third or more of the grant is lost to tax immediately.

For years creators have been subsidizing innovation through this unfair tax penalty. It is time now for the Government of Canada to encourage the creators of this country -- not only to ensure an uninterrupted flow of creative content for the burgeoning technology of the new economy, but also to signal to the nation and to the world that Canada values creative work -- by making subsistence grants tax-exempt.

PUBLIC LENDING RIGHT:

Canada has the distinction of being one of only a handful of progressive countries in the world with a Public Lending Right Commission. The call to create the Public Lending Right was spearheaded by The Writers' Union of Canada. Public Lending Right provides for a modest annual payment to Canadian book authors whose works are available in Canadian libraries for lending.

At the time of PLR's creation, the Government agreed to periodically inject increased funding into the program to ensure its success long into the future. Unfortunately government funding into PLR has not met the increased demand for funds as is reported in the recent PLR Annual report. The Union believes it is imperative that the Public Lending Right Commission receive a budgetary increase in the next budget, to bring its hit rate up to a level more aligned with the hit rate established 18 years ago.

EMPLOYMENT INSURANCE BENEFITS:

We request that this Government review a report drafted by The Standing Committee on Human Resources Development pertaining to Bill C-2 (as drafted in the 1st session of the 37th Parliament), an act to amend the Employment Insurance Act. Some of its recommendations apply to any consideration by Government on the inequities faced by creators. Two recommendations in particular could have positive effects on writers and other artists who ply their trade by being self-employed or by some combination of self-employment and paid employment. Recommendation 8 states: "In view of the growing incidence of self-employment in the Canadian labour market, the Committee recommends that the government consider developing a framework for extending EI coverage, both in terms of regular and special benefits, to self-employed workers."

Recommendation 9 is equally appropriate to creators. "The Committee recommends that the government consider extending better EI coverage to workers employed in both paid and self-employment. In the event that the government does not extend coverage to self-employed workers, a premium refund should be provided to those who work in insurable employment but are unable to establish a claim because they are also self-employed."

CONCLUSION:

Creators are at the heart of a knowledge-based economy. We produce the intellectual property on which the entire cultural sector is built. You will receive representations

from the cultural industries, the filmmakers and the publishers, the art galleries and museums. Without the individual artist who dedicates her or his working life to creative expression, developing screenplays and composing opera scores, writing books and filling galleries with paintings and sculptures, all of these industries would collapse.

The Cultural sector is large and growing. Depending on how you calculate whom it embraces, it accounts for between five and eight percent of the Canadian labour force, larger than agriculture, logging, forestry, mining and oil and gas combined, second only to health and social services. And at the heart of this enormously productive, vital part of our economy is a miniscule core of self employed creators who earn incomes that are between 25 and 50 percent below other jobs within their sector. Being self-employed, these creators function without the social safety net that employees take for granted. Their earnings are low, they pay more than their fair share of tax, and yet they are not eligible for group insurance and pension benefits, and can rarely obtain employment insurance benefits.

In today's business-oriented environment, the role of the entrepreneur is well understood and rewarded. There are grants for research into new technologies, new sources of fuel for our engines. There are tax breaks to encourage the development of new consumer products. In our rush to the bottom line, we must not forget that **our greatest resource is the individual human mind**. If we neglect to nurture our nation's creators, we will be a nation of moneychangers without a temple.

In summary, we urge the Government to remove the tax inequity currently carried by creators with fluctuating incomes, through a targeted copyright-income deduction and the introduction of income backward-averaging for creators. In addition, we further urge the Government to ensure that subsistence grants received by artists from the Canada Council for the Arts are made tax-exempt. We ask the Government to support The Writers' Union of Canada in its efforts to seek Secured and Preferred Creditor Status for Writers, in the event of publishers going into receivership.

We appeal to government to increase the Federal fiscal investment in the cultural programs of the Department of Foreign Affairs and national training institutions.

We request you support the recommendations of the Standing Committee on Human Resources Development whereby Employment Insurance coverage be extended to reflect self-employed creators or creators who eke out their living through combination of self-employment and paid employment.

We further seek this Government's support in ensuring that the Public Lending Right Commission be adequately funded, in the next budget. The Union expects this Government not to forget the serious crisis facing our senior writers, due to low incomes, and identify to government the need for funding to implement an income support program for these well-respected writers. We seek your support in our

initiative to achieve preferred and secured creditor status for authors so that they do not lose royalties owed them in cases of publisher bankruptcy or receivership.

In these ways, your government will be ensuring that writers and other artists have an equal opportunity to succeed and can live in an economic and social environment with the best possible quality of life and standard of living. Most of all, creators will be able to contribute handsomely to a prosperous Canada and play a leadership role in the new economy.

Respectfully submitted on behalf of The Writers' Union of Canada,

Wayne Grady,
Chair, The Writers' Union of Canada.